

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JAMES FABIAN,

Plaintiff,

vs.

COLIN LEMAHIEU, ET. AL.,

Defendants.

CASE NO. 4:19-cv-00054-YGR

**ORDER: (1) DENYING MOTION FOR RELIEF
FROM NON-DISPOSITIVE PRETRIAL ORDER
OF MAGISTRATE JUDGE; AND
(2) GRANTING-IN-PART AND DENYING-IN-
PART UNOPPOSED ADMINISTRATIVE
MOTION FOR LEAVE TO FILE AN
OVERSIZED BRIEF**

Re: Dkt. Nos. 128, 139

Plaintiff James Fabian has filed: (1) a motion for relief from the non-dispositive pretrial order of Magistrate Judge Sallie Kim regarding a discovery letter brief filed on May 14, 2020 (Dkt. No. 128; *see also* Dkt. Nos. 117 (joint discovery letter brief), 122 (Magistrate Judge Kim's order denying letter brief)); and (2) an unopposed administrative motion for leave to file an oversized brief with respect to an upcoming motion to certify a class. (Dkt. No. 139.)

First, with respect to the motion for relief from Magistrate Judge Kim's order and having review the record in this matter, Fabian does not persuade. Although Fabian avers that defendants have waived any and all objections due to their delay in responding to the propounded discovery, the record does not reflect that the delay was solely attributable to the defendants, especially where such a delay was agreed to by Fabian's counsel. (*See* Dkt. No. 112-1 at 47-97.) Moreover, in totality of the circumstances as reflected in the record, the Court declines to use its discretion in finding that defendants have waived any and all objections. *See Moore v. United States*, No. 10-CV-2193, 2011 WL 3739518, at *2 (N.D. Cal. Aug. 24, 2011) ("District courts have wide discretion over whether to impose sanctions pursuant to either Rule 37 or their inherent powers.")

(citing *Lew v. Kona Hosp.*, 754 F.2d 1420, 1426 (9th Cir.1985) (“The district court has great latitude in imposing sanctions under [Rule 37]”); *Unigard Sec. Ins. Co. v. Lakewood Eng’g & Mfg. Corp.*, 982 F.2d 363, 368 (9th Cir.1992) (“This circuit has recognized as part of a district court's inherent powers the broad discretion to make discovery and evidentiary rulings conducive to the conduct of a fair and orderly trial.”))). Accordingly, the motion for relief from Magistrate Judge Kim’s non-dispositive pretrial order is **DENIED**.

Second, with respect to the administrative motion for leave to file an oversized brief, the Court **GRANTS-IN-PART** and **DENIES-IN-PART** this motion: the motion and the response brief shall be limited to thirty-five (35) pages, and the reply brief shall be limited to twenty (20) pages.

This Order terminates Docket Numbers 128, and 139.

IT IS SO ORDERED.

Dated: August 3, 2020


 YVONNE GONZALEZ ROGERS
 UNITED STATES DISTRICT JUDGE